

EXHIBIT

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**DECLARATION OF ADAM HURD
PURSUANT TO 28 U.S.C. § 1746**

I, Adam Hurd, hereby state that I have personal knowledge of the facts set forth below.

If called as a witness, I could and would testify as follows:

1. I am a U.S. citizen over the age of 18.
2. I have an HP computer that runs Windows XP and I have had it since 2002. I had a firewall installed, but did not have an up-to-date anti-virus program running in June 2008.
3. In approximately June 2008 I was on my computer on the Internet and received a pop up box on my computer screen that looked like a Windows XP box. The pop up said "Antivirus XP" and: (a) looked like it was scanning my computer to detect viruses; (b) said that I had hundreds of viruses on my computer; (c) said that I had system failures and my computer was at a high risk for crashing; and (d) listed out trojans and viruses supposedly on my computer.
4. At first I thought Microsoft Windows was telling me that I had a problem because the pop up box was very similar to a Windows XP box, but I was not sure because it said I had hundreds of viruses which I did not think could be true.
5. At the time I received this pop up box I was not looking for anti-virus software and did not initialize any software program to scan my computer.
6. I tried to get rid of the pop up by clicking on the "x" in the top right-hand corner of the box, but it kept popping up. I tried to check email and do other things on the computer, but I kept receiving the pop up.
7. Because I was getting worried that Windows was telling me I had a lot of problems on

my computer, and because I thought I would actually be getting anti-virus protection, I finally agreed to buy the software product. I clicked yes, and I was asked for my billing and credit card information. I thought that I was going to pay \$50, but when I went to pay, I noticed at the bottom in fine print a box that was prechecked that said I could get "support" for an extra \$50. I unchecked the box, but there was a problem with placing my order and I had to go through the billing procedure a second time. The second time I did not see the box and realized that after I submitted my payment that I forgot to see if it was unchecked. I did not receive a confirmation of payment and was never told how much my total charge was going to be.

8. I installed the program and it scanned very quickly. It took only seconds to show what was on my computer. It said I had trojan horses and viruses. Then it took only 5 seconds to get rid of them. I did not believe that it detected anything or got rid of anything because I have scanned my computer before and it takes a lot longer than that to detect and get rid of problems.
9. I decided to do some research after that about the product, Antivirus XP, and found a lot of complaints and writings about how it is a scam.
10. I decided to call the customer support number but the voicemail box was full and I could not leave a message.
11. I then decided to check my bank account since my credit card is attached to my checking account and found that \$103 was debited from my account, not \$50 as I had authorized. I

disputed the charge with my bank and my bank put the money back into my account.

I state under penalty of perjury under the laws of the United States of America that the foregoing is true and accurate.

Date: 10/28/08


Adam Hurd